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Of Attorneys for Defendant State Farm  
Mutual Automobile Insurance Company

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

BENNETT IRBY,

Plaintiff,

Case No. 3:22-cv-00773-SI

vs.

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY, a corporation,

**STIPULATED MOTION TO ABATE**

Defendant.

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**LR 7-1(a) CERTIFICATION**

The undersigned attorneys for the above-captioned parties have conferred and indicated their agreement that this case should be abated or stayed while the Motion to Certify Question to Oregon Supreme Court is pending in *Melody J. Spear v. State Farm Mut. Auto. Ins. Co.*, Case No. 6:22-cv-0113-MK.

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## **MOTION**

COMES NOW, defendant, State Farm Mutual Automobile Insurance Company (“State Farm”), by and through its attorney, Ralph C. Spooner, Spooner & Much, P.C., and plaintiff, Bennett Irby, by and through his attorney, Travis Eiva, and moves the court for an Order abating this case while the Motion to Certify Question to Oregon Supreme Court is pending in *Melody J. Spear v. State Farm Mut. Auto. Ins. Co.*, Case No. 6:22-cv-0113-MK. In support of this Motion, the parties rely upon the district court’s file in its entirety and the Memorandum of Law set forth below.

## **MEMORANDUM OF LAW**

This case arises from a motor-vehicle accident occurring on July 11, 2017, which resulted in personal injuries to plaintiff. Plaintiff was insured under four State Farm policies at the time of the accident. Plaintiff pursued underinsured motorist (“UIM”) benefits under all four State Farm policies. State Farm paid the UIM limit of the policy issued to cover the motorcycle occupied by plaintiff in the subject motor-vehicle accident and denied UIM coverage to plaintiff under the other three policies. The parties dispute whether an exclusion, referred to as Exclusion 2.a, in the three policies where UIM coverage was denied is enforceable to exclude UIM coverage under those three policies. Defendant contends that the exclusion for UIM coverage is valid and enforceable under ORS 742.504(4)(b). Plaintiff contends that the exclusion is less favorable than ORS 742.504(4)(b) and therefore not valid and enforceable.

This same or similar legal dispute is also at issue in two other cases in the United States District Court for the District of Oregon involving the same attorneys. Those cases are:

- *Melody J. Spear v. State Farm Mut. Auto. Ins. Co.*, Case No. 6:22-cv-0113-MK; and
- *Richard Burright v. State Farm Mut. Auto. Ins. Co.*, Case No. 3:22-cv-00667-MK.

In both of these cases, the parties have already filed cross-Motions for Summary Judgment concerning the same legal dispute at issue in this case. The *Burright* case is still in the process of being briefed. The *Spear* case is fully briefed and oral argument occurred on September 15, 2022, before Judge Kasubhai. In addition to the parties' cross-Motions for Summary Judgment, Judge Kasubhai also heard argument on Plaintiff's Motion to Certify Question to Oregon Supreme Court concerning the legal issue involved in all three of these cases.

While State Farm opposes certification to the Oregon Supreme Court, the parties agree that should the District Court certify the question in *Spear*, and the question is accepted for review by the Oregon Supreme Court, that the legal dispute at issue here would be resolved by the Oregon Supreme Court's decision. If the question is not certified by the District Court, or the Oregon Supreme Court decides not to accept a question certified by the District Court in *Spear*, then the parties reserve the right to brief the issue before this court. Once the Motion to Certify Question to Oregon Supreme Court in *Spear* is resolved, the parties will be in a better position to determine what further activities need to be completed to reach a just, speedy, and efficient resolution of this case.

For the foregoing reasons, the parties respectfully request that this court enter an Order abating this case while the Motion to Certify Question to Oregon Supreme Court is pending in *Melody J. Spear v. State Farm Mut. Auto. Ins. Co.*, Case No. 6:22-cv-0113-MK.

DATED this 1<sup>st</sup> day of November, 2022.

s/ Travis Eiva

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**CERTIFICATE OF SERVICE**

I hereby certify that I served a copy of the foregoing **STIPULATED MOTION**

**TO ABATE** to the following:

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- ☒ by emailing a copy to said attorney at the above email address with consent of counsel;
- ☐ by mailing a copy in a sealed, first-class, postage prepaid envelope, addressed to said attorneys at the above address and deposited in the U.S. Mail;
- ☒ by serving correct copies thereof, certified by me as such, to attorneys via the United States District Court for the District of Oregon's CM/ECF filing system.

DATED this 1<sup>st</sup> day of November, 2022.

s/ David E. Smith  
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